

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Oct 02, 2015, 4:27 pm
BY RONALD R. CARPENTER
CLERK

E

No. 91466-4

kyh

RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

KAY L. PRUCZINSKI, a single person, and
RICKY BELL, a single person,

Respondents,

v.

ALLEN ASHBY and JENNIFER ASHBY, husband and wife,
and the marital community comprised thereof,

Petitioners.

**SUPPLEMENTAL BRIEF OF PETITIONER
ALLEN ASHBY**

PETER J. JOHNSON, WSBA # 6195
Johnson Law Group, P.S.
103 E. Indiana, Suite A
Spokane, WA 99207-2317
Phone: (509) 835-5000
Email: pjohnson@johnsonlaw.org

Attorney for Petitioner Ashby

 ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF ARGUMENT.....	2
III.	ARGUMENT.....	4
	A. JURISDICTION MUST SATISFY BOTH THE LONG-ARM STATUTE AND DUE PROCESS.	4
	1. The Long-Arm Statute.....	4
	2. The Due Process Clause.....	5
	B. PRUCZINSKI FAILED TO ESTABLISH THAT THE EXERCISE OF JURISDICTION COMPORTS WITH DUE PROCESS.....	7
	1. The Contacts Between Trooper Ashby and Washington.	7
	a. <u>The First Prong - Trooper Ashby's Acts.</u> . .	10
	1) <i>The Stop on North Idaho Road.</i> . .	10
	2) <i>The Exit from Interstate 90.</i>	11
	b. <u>The Second Prong - Aimed at the Forum.</u> . .	11
	c. <u>The Third Prong - Causing Harm that the Defendant Knows Is Likely to be Suffered in the Forum State.</u>	12
	2. Relationship Between Lawsuit and Trooper Ashby's Washington Contacts.	13
	3. Reasonableness.	14
	C. COMITY.	16
IV.	CONCLUSION.	17

TABLE OF AUTHORITIES

U.S. Supreme Court Cases

<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).....	6-8, 14, 15
<i>Calder v. Jones</i> , 465 U.S. 6783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).	9, 12
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> , 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984).....	6
<i>Int'l Shoe Co. v. Washington</i> , 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).	7, 8
<i>J. McIntyre Mach., Ltd. v. Nicastro</i> , 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011).	5
<i>Shaffer v. Heitner</i> , 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977).	6
<i>Walden v. Fiore</i> , 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).	13, 15
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).....	8, 15

Federal Cases

<i>Bancroft & Masters, Inc. v. Augusta Nat'l Inc.</i> , 223 F.3d 1082 (9th Cir. 2000).....	12
<i>Dole Food Co. v. Watts</i> , 303 F.3d 1104 (9th Cir. 2002).	10, 12

<i>Schwarzenegger v. Fred Martin Motor Co.</i> , 374 F.3d 797 (9th Cir. 2004).....	9, 10, 12, 14
<i>Washington Shoe Co. v. A-Z Sporting Goods, Inc.</i> , 704 F.3d 668 (9th Cir. 2012).....	5
<i>Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme</i> , 433 F.3d 1199 (9th Cir. 2006).....	12

Washington Cases

<i>Does 1-9 v. Compcare, Inc.</i> , 52 Wn. App. 688, 763 P.2d 1237 (1988).....	7
<i>Fernandez v. Department of Hwys.</i> , 49 Wn. App. 28, 741 P.2d 1010 (1987).	4
<i>Grange Ins. Ass'n v. State</i> , 110 Wn.2d 752, 757 P.2d 933 (1988).....	7, 14
<i>Griffiths & Sprague Stevedoring Co. v. Bayly, Martin & Fay, Inc.</i> , 71 Wn.2d 679, 430 P.2d 600, (1967).....	9
<i>Noll v. Am. Biltrite, Inc.</i> , 188 Wn. App. 572, 355 P.3d 279 (2015).....	15
<i>Oliver v. American Motors Corp.</i> , 70 Wn.2d 875, 425 P.2d 647 (1967).	15
<i>SeaHAVN, Ltd. v. Glitnir Bank</i> , 154 Wn. App. 550, 226 P.3d 141 (2010).	8
<i>Shute v. Carnival Cruise Lines</i> , 113 Wn.2d 763, 783 P.2d 78 (1989).	5
<i>Smith v. York Food Mach. Co.</i> , 81 Wn.2d 719, 504 P.2d 782 (1972).....	4

<i>State v. AU Optronics Corp.</i> , 180 Wn. App. 903, 328 P.3d 919, 926-27 (2014)	5, 14
<i>Tyee Constr. Co. v. Dulien Steel Prods., Inc.</i> , 62 Wn.2d 106, 381 P.2d 245 (1963).	9, 15

Other State Cases

<i>Ehrlich-Bober Co. v. University of Houston</i> (1980), 49 N.Y.2d 574, 404 N.E.2d 726, 427 N.Y.S.2d 604.	16
<i>Simmons v. State</i> , 206 Mont. 264, 670 P.2d 1372 (1983).	16
<i>Ward v. Hawkins</i> , 418 S.W.3d 815 (Tex. App. 2013).	8

Other

RCW 4.28.185.	4
--------------------	---

Pursuant to RAP 13.7(d), Petitioner Trooper Allen Ashby of the Idaho State Police (hereinafter “Trooper Ashby”) submits this Supplemental Brief to provide additional points and authorities.

I. INTRODUCTION

This is a claim brought by Idaho residents, Kay Pruczinski and Rick Bell (hereinafter collectively referred to as "Pruczinski"), against an Idaho resident, Trooper Ashby, who was on duty for the Idaho State Police, an Idaho state agency, patrolling Interstate 90 in Idaho when he observed an Idaho-licensed vehicle weaving in its lane. The Idaho vehicle then exited Interstate 90, just west of the Idaho-Washington border in the Port of Entry area, which has a small network of access roads that travel in and around the Idaho-Washington border leading to other roads in both Idaho and Washington. *See* Brief of Respondent, pp. 6-7, and Exhibit No. 1 thereto. The Idaho vehicle traveled approximately a mile on a road which turns into North Idaho Road, which straddles and traverses the Idaho-Washington border. It then sped up beyond the posted speed limit. Trooper Ashby stopped the vehicle in what he believed to be Idaho to investigate the driver for driving while impaired.

Pruczinski alleges that the stop occurred on a portion of North Idaho Road which lies in Washington and, thus, jurisdiction lies in Washington. The Court of Appeals in reversing the Superior Court summary judgment for Trooper Ashby agreed, holding that long-arm jurisdiction was appropriate based upon Pruczinski's allegations. Trooper Ashby submits that the Court of Appeals' decision surrendered his rights of due process to Pruczinski's allegations and that exercise of Washington jurisdiction over him under the facts of this case is not fair and just.

II. SUMMARY OF ARGUMENT

It is clear from the record that Trooper Ashby's activities were not directed at Washington or its residents. Viewing Trooper Ashby's contacts with Washington through the proper lens, *i.e.*, a defendant-focused inquiry, he observed an Idaho-licensed vehicle being operated in a manner he found suspicious for impaired driving. He followed this vehicle from Interstate 90 in Idaho to an Idaho road and stopped it in Idaho to investigate. Although the Pruczinski vehicle exited Interstate 90 at a location just inside the Washington border, this fact did not indicate that the vehicle remained in Washington because the network of roads off that exit wind in and through

the Idaho-Washington border and almost immediately access Idaho roads that travel to Stateline, Idaho, and Post Falls, Idaho.

Under the Court of Appeals' decision, neither a Washington nor an Idaho officer standing side-by-side at the point of the stop on North Idaho Road would be able to determine which of them is at risk of suit in a foreign jurisdiction, even though each followed a vehicle licensed in their respective state along the roadways in the Port of Entry area; each did so from their side of the Idaho-Washington border; and each stopped that vehicle in what each believed to be their respective state. The line of reasoning utilized by the Court of Appeals traps not only Idaho officers, but Washington officers as well, into foreign jurisdictions because they must structure their conduct to do an undoable thing – patrol roads which straddle and traverse the Idaho-Washington border without knowingly touching upon the other state's territory; they must know an unknowable thing – exactly where an invisible state border lies on those roadways; and they must foresee an unforeseeable thing – in which state will a driver allege he was stopped by an officer, thereby determining the state jurisdiction to which the officer is subject. There must be more than a mere allegation as to the state in which an alleged tort occurred for the exercise of that state's jurisdiction to be constitutional.

Even assuming Pruczinski's alleged facts to be true, when the proper analysis is applied to the facts of this case, Trooper Ashby's minimal contacts with Washington fall short of the requisite elements for specific jurisdiction. Thus, the exercise of Washington jurisdiction over him clearly offends traditional notions of fair play and substantial justice.

III. ARGUMENT

The Petition for Review sets forth the basic legal framework for the issues in this case and provides a preliminary application. The following supplements that argument.

A. JURISDICTION MUST SATISFY BOTH THE LONG-ARM STATUTE AND DUE PROCESS

1. The Long-Arm Statute

Washington's long-arm statute, RCW 4.28.185, establishes the extent to which the state intends its courts to exercise jurisdiction over nonresidents. To potentially establish jurisdiction under RCW 4.28.185(1)(b), a plaintiff need only allege that a tortious act was committed in Washington. *Smith v. York Food Mach. Co.*, 81 Wn.2d 719, 722, 504 P.2d 782 (1972); *Fernandez v. Department of Hwys.*, 49 Wn. App. 28, 37 n. 5, 741 P.2d 1010 (1987). Accordingly, for purposes of his motion to dismiss, Trooper Ashby conceded that Pruczinski made such an allegation.

2. The Due Process Clause

Washington's long-arm statute "extends jurisdiction over a defendant to the fullest extent permitted by the Due Process Clause of the Fourteenth Amendment." *Washington Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d 668, 672 (9th Cir. 2012) (citing RCW 4.28.185; *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 783 P.2d 78 (1989)). "Personal jurisdiction, of course, restricts 'judicial power not as a matter of sovereignty, but as a matter of individual liberty,' for due process protects the individual's right to be subject only to lawful power. But whether a judicial judgment is lawful depends on whether the sovereign has authority to render it." *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2789, 180 L. Ed. 2d 765 (2011) (plurality opinion) (citations omitted).

Determining personal jurisdiction "requires a forum-by-forum, or sovereign-by-sovereign, analysis. The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." *State v. AU Optronics Corp.*, 180 Wn. App. 903, 918, 328 P.3d 919, 926-27 (2014) citing *J. McIntyre*, 131 S. Ct. at 2789.

This due process inquiry is rooted in principles of fairness so that courts exercise jurisdiction only over those nonresidents who could reasonably anticipate being “haled into court” in that forum. The appropriate analysis necessitates a defendant-focused inquiry for the same reason. Absent sufficient contacts purposefully created by the nonresident with the forum that establish a relationship between the nonresident and the forum,¹ parties could potentially subvert the due process principles that govern personal jurisdiction. The “quality and nature” of an interstate transaction may sometimes be so “random,” “fortuitous,” or “attenuated” that it cannot fairly be said that the potential defendant “should reasonably anticipate being haled into court” in another jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486, 105 S. Ct. 2174, 2189, 85 L. Ed. 2d 528 (1985); *see also* n. 18, *supra*.

¹ When a controversy is related to or “arises out of” a defendant’s contacts with the forum, the Court has said that a “relationship among the defendant, the forum, and the litigation” is the essential foundation of in personam jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404 (1984) citing *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 2579, 53 L.Ed.2d 683 (1977).

B. PRUCZINSKI FAILED TO ESTABLISH THAT THE EXERCISE OF JURISDICTION COMPORTS WITH DUE PROCESS

A Washington court's personal jurisdiction over a nonresident defendant must be analyzed within the context of the permissible limits of due process. When appropriate, a court may exercise either general or specific personal jurisdiction. In this case, only specific personal jurisdiction is at issue. In asserting specific jurisdiction, Washington has adopted essentially the same test as articulated by the U.S. Supreme Court:

The United States Supreme Court has articulated three criteria for making this determination: (1) purposeful "minimum contacts" must exist between the defendant and the forum state; (2) the plaintiff's injuries must "arise out of or relate to" those minimum contacts; and (3) the exercise of jurisdiction must be reasonable, that is, that jurisdiction be consistent with notions of "fair play and substantial justice."

Does 1-9 v. Compcare, Inc., 52 Wn. App. 688, 696, 763 P.2d 1237 (1988) citing *Burger King*, 471 U.S. at 472-78; see also *Grange Ins. Ass'n v. State*, 110 Wn.2d 752, 758, 757 P.2d 933 (1988).

1. The Contacts Between Trooper Ashby and Washington

"The Supreme Court has held that, to exercise jurisdiction in harmony with due process, defendants must have 'minimum contacts' with the forum state, such that having to defend a lawsuit there would not 'offend traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*,

326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). “Minimum contacts” means “significant,” not “random, fortuitous or attenuated” contact. *Burger King*, 471 U.S. at 475. Jurisdiction is proper where the contacts proximately result from actions by the defendant himself which create a “substantial connection” with the forum state. *Burger King*, 471 U.S. at 475; *see also* *SeaHAVN, Ltd. v. Glitnir Bank*, 154 Wn. App. 550, 564, 226 P.3d 141 (2010). *Burger King* stated in its discussion in n. 18:

The Court has noted, however, that “some single or occasional acts” related to the forum may not be sufficient to establish jurisdiction if “their nature and quality and the circumstances of their commission” create only an “attenuated” affiliation with the forum. ... This distinction derives from the belief that, with respect to this category of “isolated” acts, ... the reasonable foreseeability of litigation in the forum is substantially diminished.

See Burger King, n. 18 (citations omitted). The Texas courts have articulated this principle as: “Significant contacts suggest that the defendant has taken advantage of forum-related benefits, while minor ones imply that the forum itself was beside the point.” *Ward v. Hawkins*, 418 S.W.3d 815, 823 (Tex. App. 2013), reh'g overruled (Jan. 17, 2014). Casual or accidental contacts by a defendant with the forum state cannot sustain the exercise of specific jurisdiction. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Int'l Shoe Co.*, 326 U.S. at 317.

In discussing whether a defendant took affirmative steps which would submit it to Washington jurisdiction, the Washington Supreme Court has held:

In the absence of a connecting tie or link between a nonresident and the forum state, the long-arm statute does not vest jurisdiction in the courts of a forum state where none existed before enactment of the statute. ... The connecting link then may consist of affirmative acts taking place here by which the out-of-state resident overtly submits to jurisdiction Where, of course, it appears that the long-arm statute is employed as an instrument of oppression involving an abuse of judicial process or employment of the courts in a plan or scheme for unlawful harassment and injury, and other than in a bona fide use of the courts to obtain a lawful judgment or decree—that is, where the means overshadow the ends in the scheme of litigation — then the long-arm statute would not establish jurisdiction if none existed before its enactment. We said this in *Tyee Constr. Co. v. Dulien Steel Products, Inc.*, *supra*, in stating that assumption of jurisdiction 'must not offend traditional notions of fair play and substantial justice.'"

Griffiths & Sprague Stevedoring Co. v. Bayly, Martin & Fay, Inc., 71 Wn.2d 679, 684-85, 430 P.2d 600 (1967) (citations omitted).

To assess the first element of the “minimum contacts” test in a claim sounding in tort, a court uses a “purposeful direction” analysis. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). Purposeful direction is analyzed under the three-part “effects” test set forth in *Calder v. Jones*, 465 U.S. 678, 104 S. Ct. 1482, 79 L. Ed. 2d 804

(1984); *see Schwarzenegger*, 374 F.3d at 803. This test requires that a defendant has “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Id.* at 803; *see also Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). Absent any of these elements, purposeful direction is not established.

a. **The First Prong - Trooper Ashby’s Acts**

1) ***The Stop on North Idaho Road***

The “intentional act” identified by the Court of Appeals was that Trooper Ashby “followed a car driven by Ms. Pruczinski from the Idaho border into Washington, stopped the car, allegedly broke the window, dragged her from her car, and searched her in an offensive manner.” Opinion, pg. 7. This statement is problematic first and foremost because it is based upon Trooper Ashby’s alleged contact with Pruczinski rather than his purposeful contacts with Washington. The stop of the vehicle on North Idaho Road cannot satisfy the effects test for the simple reason that Trooper Ashby believed the stop occurred in Idaho. He could not have known that he was on the Washington side of an indiscernible state border on North Idaho Road and, thus, any contact he had with Washington was mere happenstance. His

conduct could not have been expressly aimed at a forum he did not know he was in, and he could not have caused harm he knew was likely to be suffered in that forum for the same reason.

2) *The Exit from Interstate 90*

The record is clear that there was only one intentional contact with Washington – the exit from Interstate 90 on the Washington side of the Idaho-Washington state line. This, however, was nothing more than the fortuity of the exit existing on the west side of the border. In fact, the small network of roads off this exit wind in, around, and across the Idaho-Washington border. They access Idaho roads to Stateline and Post Falls, Idaho, less than a mile from the exit. The exit was of no significance in the alleged course of conduct at issue here.

b. **The Second Prong - Aimed at the Forum**

Although Pruczinski argues that Trooper Ashby targeted her while he should have known she was in Washington, this does not satisfy the requirement that Trooper Ashby had to have aimed his intentional tortious conduct at a plaintiff whom he knew to be a resident of Washington. To the contrary, Pruczinski must demonstrate that Trooper Ashby expressly aimed his conduct at the forum state by engaging in wrongful conduct targeted at an

individual whom he knew to be a forum state resident. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000). These facts do not exist. It is undisputed that Pruczinski was driving an Idaho-licensed vehicle. She was on Interstate 90 in Idaho. She traveled off the Interstate 90 at the Idaho-Washington state line and back onto an Idaho road. There are no facts to support any inference that Trooper Ashby was targeting someone he knew or even suspected of being a Washington resident.

“An intentional act aimed exclusively at a location other than the forum state, which results in harm to a plaintiff in the forum state, does not satisfy the ‘express aiming’ requirement under *Calder*.” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1224 (9th Cir. 2006).

c. **The Third Prong - Causing Harm that the Defendant Knows Is Likely to Be Suffered in the Forum State**

This element cannot be met because it requires that the alleged conduct cause “harm that defendant knows is likely to be suffered in the forum state.” *Schwarzenegger*, 374 F.3d at 803 citing *Dole Food Co.*, 303 F.3d at 1111; *see also Calder v. Jones*, 465 U.S. 783 (1984). Neither the exit at the Idaho-Washington state line nor the subsequent stop in what Trooper

Ashby believed to be Idaho sufficiently satisfy this element. There is no evidence that Trooper Ashby's exit at the state line caused a harm he knew was likely to be suffered in Washington. There is no evidence that he had knowledge that a stop on North Idaho Road in what he believed to be Idaho would cause harm likely to be suffered in Washington.

As the U.S. Supreme Court held in *Walden*: "The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Walden v. Fiore*, 134 S. Ct. 1115, 1125, 188 L. Ed. 2d 12 (2014). It is the various contacts that the defendant created with the forum (and not just with the plaintiff) which must be examined. *Walden*, 134 S. Ct. at 1123. In short, to satisfy the effects test, Washington must have been the focal point of Trooper Ashby's intentional acts. This is clearly not the case. While the exit at the Idaho-Washington state line lies to the west of the border instead of to the east, this does not change the fact that this exit provides almost immediate access to Idaho roads in the area.

2. Relationship Between Lawsuit and Trooper Ashby's Washington Contacts

Purposeful direction alone is still insufficient. The second requirement for specific jurisdiction is that the claim "arises out of or relates to the

defendant's forum-related activities." *Schwarzenegger*, 374 F.3d at 802. This prong is satisfied only if a plaintiff would not have been injured "**but for" the defendant's conduct directed toward the forum state.** See *State v. AU Optronics Corp.*, 180 Wn. App. 903, 914, 328 P.3d 919, 925 (2014); see also *Grange Ins. Ass'n v. State*, 110 Wn.2d at 758, (citing *Burger King*, 471 U.S. at 472–78). The only purposeful conduct of Trooper Ashby involving Washington was his exit from Interstate 90 on the Washington side of the border and Pruczinski's claim did not arise from this forum-related contact.

3. Reasonableness

Pruczinski has not adequately shown purposeful direction and, thus, the burden has not shifted to Trooper Ashby to show that jurisdiction is unreasonable. However, assuming *arguendo* that the requirement of minimum contacts was met by the facts herein, jurisdiction based upon a *de minimis* contact is not constitutionally reasonable.

Furthermore, the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state; the relative convenience of the parties; the benefits and

protection of the laws of the forum state afforded the respective parties; and the basic equities of the situation. *Tyee Const.*, 62 Wn.2d at 116. These factors as well as the factors considered by the Ninth Circuit in determining reasonableness are addressed in detail in Trooper Ashby's prior briefs.

Due process must also be rooted in fairness. This principle "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Noll v. Am. Biltrite, Inc.*, 188 Wn. App. 572, 355 P.3d 279, 282 (2015) citing *World-Wide Volkswagen*, 444 U.S. at 297; accord *Burger King*, 471 U.S. at 471-72.

To attach personal jurisdiction because of a contact with Washington which is neither meaningful (*Walden*, 134 S. Ct. at 1125) nor substantial (*Burger King*, 471 U.S. at 475) is "so slender and tenuous a thread upon which to hang the implication of submission to ... jurisdiction, that [it] ... does indeed offend 'traditional notions of fair play and substantial justice' within the contemplation of the due process clause." *Oliver v. American Motors Corp.*, 70 Wn.2d 875, 889, 425 P.2d 647 (1967).

C. COMITY

Assuming, *arguendo*, that the nature of Trooper Ashby's contacts with Washington were such that asserting jurisdiction would not offend due process, comity still compels dismissal of this suit. In declining jurisdiction over the State of Oregon, the Supreme Court of Montana in *Simmons v. State*, 206 Mont. 264, 289, 670 P.2d 1372, 1385 (1983) quoted a decision from the Court of Appeals of New York which defined comity as:

“‘not a rule of law, but one of practice, convenience, and expediency’.... It does not of its own force compel a particular course of action. Rather, it is an expression of one state's entirely voluntary decision to defer to the policy of another. ... Such a decision may be perceived as promoting uniformity of decision, as encouraging harmony among participants in a system of co-operative federalism, or as merely an expression of hope for reciprocal advantages in some future case in which the interests of the forum are more critical.”

Simmons, 206 Mont. at 289 citing *Ehrlich-Bober Co. v. University of Houston* (1980), 49 N.Y.2d 574, 580, 404 N.E.2d 726, 730, 427 N.Y.S.2d 604 (citations omitted). *Simmons* found that where Oregon was performing a regional medical service, the assumption of jurisdiction would impinge unnecessarily upon the harmonious interstate relations which are part and parcel of the spirit of co-operative federalism. *Simmons* then held that Oregon courts had just as much, if not more, interest in adjudicating the dispute. In

conclusion, the *Simmons* Court held that assertion of jurisdiction over Oregon would not comport with principles of due process.

This is a dispute between Idaho residents regarding the performance of the duties of an employee of an Idaho state agency. Although the parties may have touched upon Washington's territory momentarily, there exists no other factor concerning Washington's involvement in this dispute. Where Pruczinski, an Idaho resident, had the power to choose a forum, and chose a forum with virtually no connection to the dispute, that choice should not afford jurisdiction not otherwise constitutionally reasonable. Thus, the application of comity is appropriate and is a basis warranting dismissal.

IV. CONCLUSION

Exercising jurisdiction over Trooper Ashby abrogated his right to due process. Under these facts, the mere allegation that a tort was committed in Washington cannot stand alone as a basis for extending Washington jurisdiction over an Idaho resident. Clearly, none of the requisite elements of due process were met under the standards set forth by the United States Supreme Court or the Washington Supreme Court. This failure to satisfy the requisite elements under a proper analysis deprived Trooper Ashby of due process of law.

In summary, the sole intentional contact in this case by Trooper Ashby with Washington does not justify the exercise of specific jurisdiction over him. Therefore, Trooper Ashby respectfully requests that this Court reverse the Court of Appeals and reinstate the trial court's decision granting him a dismissal of this lawsuit.

DATED : October 2, 2015.

JOHNSON LAW GROUP

A handwritten signature in cursive script, appearing to read "Peter J. Johnson".

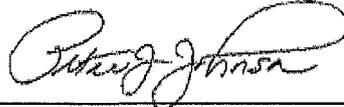
By: _____
PETER J. JOHNSON, WSBA # 6195
Attorney for Allen Ashby

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on October 2, 2015, I caused the document to which this certificate is attached to be delivered to the following as indicated:

Douglas D. Phelps	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Phelps & Associates, P.S.	<input type="checkbox"/> Hand Delivery
2903 N. Stout Road	<input type="checkbox"/> Facsimile
Spokane, WA 99206-4373	<input type="checkbox"/> Federal Express
	<input type="checkbox"/> Email

Signed at Spokane, Washington, this 2nd day of October, 2015.



PETER J. JOHNSON

OFFICE RECEPTIONIST, CLERK

To: Brenda K. Winebarger
Subject: RE: Pruczinski v. Ashby - No. 91466-4

Received on 10-02-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Brenda K. Winebarger [mailto:bwinebarg@johnsonlaw.org]
Sent: Friday, October 02, 2015 4:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Pruczinski v. Ashby - No. 91466-4

October 2, 2015

Mr. Ronald R. Carpenter
Clerk of the Supreme Court
415 - 12th Avenue SW
Olympia, WA 98501-2314

Email: supreme@courts.wa.gov

Re: Pruczinski v. Ashby
No. 91466-4

Dear Mr. Carpenter:

Attached in PDF format please find the Supplemental Brief of Petitioner Allen Ashby for filing in the above-referenced action. Please contact me should there be any problems with the attached file or document.

Brenda K. Winebarger

Paralegal

Johnson Law Group, P.S.

103 E. Indiana, Suite A

Spokane, WA 99207-2317

(509) 835-5000

bkw@johnsonlaw.org

INFORMATION CONTAINED IN THIS E-MAIL TRANSMISSION IS PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT THE INTENDED RECIPIENT, DO NOT READ, DISTRIBUTE OR REPRODUCE THIS TRANSMISSION (INCLUDING ATTACHMENT(S)). IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER BY E-MAIL REPLY.

<<BRIEF - Supplemental (2015-10-02).pdf>>